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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,407	01/22/2004	Kevin Rabska	1-24313	4903

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MACMILLAN SOBANSKI & TODD, LLC  
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EXAMINER

SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/762,407

Applicant(s)

RABSKA ET AL.

Examiner

Robert G. Santos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 24 is objected to because of the following informalities: In the third line of claim 24, the phrase "a passage" should be changed to the phrase --the hole--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-11, 13-32 and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation wherein the assist handle is "readily removable from the handle mount without the aid of tools" as recited in independent claims 1 & 19 and in dependent claim 34 is not supported by the disclosure as originally filed.

3. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "*the* partial annular groove" as recited in claim 27 lacks proper antecedent basis (since claim 27 is dependent upon claim 24), thereby rendering claim 27 indefinite.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Pat. No. 5,381,571 to Gabhart (note especially Figures 1-5; column 2, lines 24-35 & 45-68; and column 3, lines 1-23).

6. Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Pat. No. 5,069,465 to Stryker et al. (note especially Figures 1-5; column 5, lines 5-68; and column 6, lines 1-48).

7. Claims 1, 5, 6, 13-16, 19, 23, 28-31 and 33-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Pat. No. 6,076,209 to Paul (note especially Figures 1 & 8-12; column 4, lines 13-16; column 7, lines 25-67; and column 8, lines 1-32).

***Response to Amendment***

In response to Applicants' arguments on pages 10 and 13 of their amendment regarding claim 1, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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Moreover, the newly-added recitation stating that the assist handle is “readily removable from the handle mount without the aid of tools” does not provide sufficient structure and is also dependent upon the particular user. Consequently, the prior art rejections of claim 1 under Gabhart ‘571 and Stryker et al. ‘465 have been respectfully maintained. In response to Applicants’ arguments on pages 10 and 11 of their amendment concerning claims 3 and 4, the examiner respectfully maintains that the Gabhart ‘571 reference discloses the use of an assist handle (22) in the shape of an inverted U-shape structure (formed by the left vertical member, top horizontal member, and right vertical member of element 22 as shown in Figure 2) and one or more cross members (defined by the bottom horizontal member of element 22 as shown in Figure 2).

With regards to Applicants’ arguments on pages 11 and 13 of their amendment concerning claim 5, the examiner respectfully asserts that any portion of the respective assist handles of Gabhart ‘571 and Stryker et al. ‘465 may be interpreted as being a grip element since the claim does not clearly define any specific structure pertaining to the grip. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). With regards to Applicants’ arguments on page 11 of their amendment concerning claim 6, Merriam Webster’s Collegiate Dictionary (Tenth Edition) defines the term *bracket* as “a fixture projecting from a wall or column”; consequently, the examiner respectfully asserts that element 25 of the device of Gabhart ‘571 as well as elements 48 & 49 of the device of Stryker et al. ‘465 may be broadly interpreted as being a bracket (as shown in Figure 4 of Gabhart ‘571 and as shown in Figure 1 of Stryker et al. ‘465) which supports the handle mount relative to the bed (through element 11 of Gabhart ‘571 and through

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element 22 of Stryker et al. '465). Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

In response to Applicants' arguments on page 11 of their amendment regarding claim 7, the examiner respectfully maintains that Gabhart '571 still teaches the use of a handle mount including a plate having a hole therein (as shown in Figure 4, element 43 includes a planar component having a tubular portion with a hole 41 formed therein) and a generally cylindrical sleeve (23) supported relative to the plate with a passage (51) therethrough that aligns with the hole. Likewise, in response to Applicants' arguments on page 14 of their amendment regarding claim 7, the examiner respectfully maintains that Stryker et al. '465 still teaches the use of a handle mount including a plate having a hole (58) therein and a generally cylindrical sleeve (51) supported relative to the plate (through element 57) with a passage (62) therethrough that aligns with the hole. Furthermore, in response to Applicants' arguments on pages 11 and 12 of their amendment regarding claim 13, the examiner also respectfully maintains that Gabhart '571 teaches the use of a latch *configuration* including a receiver (43) for receiving a member (a vertical portion of element 23) of the assist handle (22) and the member of the assist handle *supports* a locking pin (39, which is supported when situated in the locked position as shown in Figure 4) that is releasably engageable with the hole as recited in the claim.

Lastly, with regards to Applicants' arguments on page 12 of their amendment concerning claims 14 & 17 and on page 14 of their amendment concerning claims 8-10, the examiner respectfully agrees. Hence, the rejections of claims 14-18 under 35 U.S.C. 102(b) as being clearly anticipated by Gabhart '571 and the rejections of claims 8-11 under 35 U.S.C. 102(b) as being clearly anticipated by Stryker et al. '465 have been respectfully withdrawn.

*Allowable Subject Matter*

8. Claim 12 is allowed.

*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brooke et al. '793, Paul '280, Rabska et al. '254, Hutt '133 and Nelson '024.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
February 18, 2005